

SLR:RKH:KMA; 2018V00809

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TY CLEVENGER,

Plaintiff,

-against -

U.S. DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION,  
and NATIONAL SECURITY AGENCY,

Defendants.

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**ANSWER TO FIRST  
AMENDED COMPLAINT**

Civil Action No. 18-CV-1568

(Kuntz, J.)  
(Bloom, M.J.)

Defendants, U.S. DEPARTMENT OF JUSTICE (“DOJ”), FEDERAL BUREAU OF INVESTIGATION (“FBI”), AND NATIONAL SECURITY AGENCY (“NSA”), by and through their attorney, RICHARD P. DONOGHUE, United States Attorney for the Eastern District of New York, KATHLEEN A. MAHONEY, Assistant United States Attorney, of Counsel, upon information and belief, answer the correspondingly numbered paragraphs in the First Amended Complaint, as follows:

The first unnumbered paragraph in the First Amended Complaint sets forth Plaintiff’s characterization of this action, to which no response is necessary. To the extent that any portion of this section of the First Amended Complaint is deemed to contain an allegation of material fact or a response to it is deemed necessary, Defendants deny those allegations.

### **Jurisdiction and Venue**

1. This paragraph sets forth conclusions of law to which no response is necessary.
2. This paragraph sets forth conclusions of law to which no response is necessary. To the extent that a response may deemed necessary, deny knowledge and information sufficient to form a belief as to the allegation concerning where Plaintiff resides.

### **Parties**

3. Deny knowledge and information sufficient to form a belief as to the allegations in this paragraph.
4. Defendant DOJ admits the allegations in the first and third sentences. The allegations in the second sentence set forth conclusions of law to which no response is necessary.
5. With respect to the allegations in the first sentence, Defendant FBI admits that the FBI is a component of the DOJ, which is a federal agency as defined by the Freedom of Information Act (“FOIA”); the remainder of the remainder of this sentence is a conclusion of law to which no response is necessary. Defendant FBI denies the allegations in the second sentence, and admits the allegations in the third sentence.
6. Defendant NSA admits the allegations in the first sentence. The allegations in the second sentence set forth conclusions of law to which no response is necessary. With respect to the allegations in the third sentence, Defendant NSA admits that it is headquartered at 9800 Savage Road, Fort George G. Meade, Maryland, and denies the remaining allegations.

### **Statement of Facts**

7. With respect to the allegations in first sentence and what appears to be quoted language in the single-spaced indented paragraphs following it, Defendants DOJ and FBI admit receiving a FOIA request from Plaintiff in March 2017, aver that despite enclosing a

letter dated October 5, 2016, the request was dated March 7, 2016 (not March 7, 2017 as alleged), and respectfully refer the Court to Plaintiff's FOIA request for its accurate and complete contents. With respect to the allegations in the second sentence, Defendant FBI admits that it has released some responsive records to Plaintiff, and Defendants DOJ and FBI deny the remaining the remaining allegations. Defendants DOJ and FBI deny the allegations in the third sentence. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations.

8. With respect to the allegations in first sentence, Defendant FBI admits that it received a second FOIA request from Plaintiff dated March 7, 2017. With respect to the remaining allegations in the first sentence and the allegations in the second and third sentences, Defendant FBI respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant FBI denies the allegations in the fourth sentence. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

9. Defendants DOJ and FBI admit that they received a FOIA request from Plaintiff dated September 1, 2017, and respectfully refer the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Defendant DOJ admits the allegations in the first two sentences concerning the exchange of correspondence between the Executive Office for United States Attorneys ("EOUSA") and Plaintiff, and respectfully refers the Court to that correspondence for its accurate and complete contents. Defendant DOJ denies the allegations in the third sentence, and avers that the EOUSA has responded to Plaintiff's FOIA request. Defendants FBI and

NSA deny knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

11. Defendants DOJ and FBI admit that the FBI sent Plaintiff a letter dated September 19, 2017, deny the remaining allegations, and respectfully refer the Court to the letter for its accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

12. Defendants DOJ and FBI admit that Plaintiff filed an appeal dated September 30, 2017 with the Office of Information Policy (“OIP”) and that the OIP sent Plaintiff a letter dated November 9, 2017 denying Plaintiff’s appeal, deny the remaining allegations, and respectfully refer the Court to Plaintiff’s appeal and the OIP’s response for their accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph in this paragraph.

13. With respect to the allegations in first sentence and what appears to be quoted language in the numbered, single-spaced indented paragraphs following it, Defendant FBI admits that it received a FOIA request from Plaintiff dated October 1, 2017, and respectfully refers the Court to Plaintiff’s FOIA request for its accurate and complete contents. Defendant FBI denies the allegations in the second and third sentences. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph in this paragraph.

14. With respect to the allegations in the first sentence and the indented paragraph following it, Defendant NSA admits that it received a FOIA request from Plaintiff dated October 10, 2017, and respectfully refers the Court to Plaintiff’s FOIA request for its accurate and complete contents. Defendant NSA admits the allegations in the second sentence, and

denies the allegations in the third sentence. Defendants DOJ and FBI deny knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

**Count 1**

**(Violation of FOIA, 5 U.S.C. § 552)**

15. Defendants incorporate by reference their responses to ¶¶ 1 through 14 as though set forth in full herein.

16. This paragraph sets forth conclusions of law to which no response is necessary.

**Request for Relief**

17. This paragraph sets forth Plaintiff's request for relief to which no response is necessary. To the extent that any portion of this paragraph is deemed to contain an allegation of fact or a response is deemed necessary, Defendants deny those allegations.

**DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. The FBI is not an "agency" within the meaning of the FOIA and is not a proper party defendant.
3. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the DOJ.
4. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the FBI.
5. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the NSA.
6. Plaintiff is not entitled to any relief under the Freedom of Information Act, 5 U.S.C. § 552.

WHEREFORE, Defendants respectfully request that judgment be entered dismissing this action and granting such other and further relief as the Court deems just and proper, including Defendant's costs and disbursements.

Dated: Brooklyn, New York  
July 11, 2018

RICHARD P. DONOGHUE  
UNITED STATES ATTORNEY  
Eastern District of New York  
Attorney for Defendant  
271-A Cadman Plaza East, 7<sup>th</sup> Floor  
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TO: Ty Clevenger  
Pro Se Plaintiff  
P.O. Box 20753  
Brooklyn, New York 11202-0752

**DECLARATION OF SERVICE**

Kathleen A. Mahoney hereby declares and states as follows:

That on the 11<sup>th</sup> day of July, 2018, I electronically filed and served by First Class Mail the foregoing

Answer

on

Ty Clevenger  
Pro Se Plaintiff  
P.O. Box 20753  
Brooklyn, New York 11202-0752

Dated: Brooklyn, New York  
July 11, 2018

*s/Kathleen A. Mahoney*  
Kathleen A. Mahoney